

1992

The State of Utah v. William D. Peterson, II : Reply Brief

Utah Court of Appeals

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_ca1

 Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Jan Graham; Utah Attorney General; Brent A. Burnett; Assistant Attorney General; Attorneys for Appellee.

William D. Peterson; Appellant Pro Se.

Recommended Citation

Reply Brief, *Utah v. Peterson*, No. 920689 (Utah Court of Appeals, 1992).
https://digitalcommons.law.byu.edu/byu_ca1/3665

This Reply Brief is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

BRIEF

UTAH
DOCUMENT
KFU

50

.A10

IN THE UTAH COURT OF APPEALS
State of Utah

DOCKET NO. 920689CA

THE STATE OF UTAH)	
- Plaintiff & Appellee)	
)	
-vs-)	UCA Case No. 920689-CA
)	
William D. Peterson, II)	Priority 15
- Defendant & Appellant)	

REPLY BRIEF OF APPELLANT

Appeal from the
Fourth Judicial Circuit Court, Utah County
Honorable E. Patrick McGuire, Presiding

WILLIAM D. PETERSON
Defendant/Appellant
1037 Watercress Ln #2V
Midvale, Utah 84047
Telephone: 566-9011

JAN GRAHAM (1231)
Utah Attorney General
BRENT A. BURNETT - (4003)
Assistant Attorney General
236 State Capitol
Salt Lake City, Utah 84114
Telephone: (801) 538-1016
Attorneys for State of Utah
Plaintiff/Appellee

Pursuant to the provisions of Utah Rules of Appellant
Procedure - Rule 24 (a), Briefs, Rule 26, Filing and service, and
Rule 27, Form, the appellant files this brief.

BRIEF ON APPEAL, per ORDER ON REHEARING dated 10th February,
1993, which granted the petition and reinstated the appeal.

file:\L\utah-hp\Reply593.BRF


Utah Court of Appeals

MAY 12 1993


Mary T. Noonan
Clerk of the Court

THE STATE OF UTAH)
- Plaintiff & Appellee)
)
-vs-) UCA Case No. 920689-CA
)
William D. Peterson, II) Priority 15
- Defendant & Appellant)

Appeal from the
Fourth Judicial Circuit Court, Utah County
Honorable E. Patrick McGuire, Presiding

JAN GRAHAM (1231)
Utah Attorney General
BRENT A. BURNETT - (4003)
Assistant Attorney General
236 State Capitol
Salt Lake City, Utah 84114
Telephone: (801) 538-1016
Attorneys for State of Utah
Plaintiff/Appellee

BRIEF ON APPEAL, per ORDER ON REHEARING dated 10th February, 1993, which granted the petition and reinstated the appeal.

file:\L\utah-hp\Reply593.BRF

A. PARTIES TO THE APPEAL

The plaintiff in this matter is the State of Utah. The defendant is William D. Peterson II. Third party defendants include the State of Utah and his attorney and prosecutor Ben Davis. Other individuals responsible for non payment of the Vitro tailings work and the State's bad construction payment bond include, Fred Nelson, Mark Day, and Ken Alkama; Peter Van Alstyne is cited for the seizure of Peterson's corporation filing papers.

B. TABLE OF CONTENTS

B. TABLE OF CONTENTS

	REPLY-BRIEF	Page
A.	PARTIES TO THE APPEAL	i
B.	TABLE OF CONTENTS	i
C.	TABLE OF AUTHORITIES	ii
D.	STATEMENT OF JURISDICTION	1
E.	STATEMENT OF THE ISSUES (Inappropriate and Untimely Request to Strike etc.)	1
F.	DETERMINATIVE STATUTES	4
G.	STATEMENT OF THE CASE	5
H.	NOT A CRIMINAL MATTER	6
I.	STATEMENT OF FACTS	10
J.	ARGUMENT	14
K.	SUMMARY	22
L.	CONCLUSION	24
M.	SIGNATURE	25
N.	MAILING CERTIFICATE	26
O.	ADDENDUM	27

C. TABLE OF AUTHORITIES

CASES

- a) In Hutchins v. Commonwealth, 604 A.2d 1130 (Pa. Comw. Ct. 1992), the court affirmed ... the striking of the defendant's new defense for the original matter . . pg 17
- b) Conversely, in Philadelphia v. Pennrose Management, 598 A.2d 105 (Pa. Commw. Ct. 1991), the court affirmed ... Judges failure to strike. pgs 17, 18
- c) In City of Independence v. Mickey, No. 54380, 1988 WL 112317 (Ohio Ct. App. 1988) court held ... plaintiff's motion of striking of counter-complaint pg 19
- d) In State v. Latendresse, 464 N.W.2d 205 (N.D. 1990) On appeal, defendant raised defenses and arguments, court upheld the striking of his counterclaim. pg 21

In every instant in the referenced case matters, the court ruled on the striking of admitted matter. In none of these cases was the determinations of admissibility of matter "rejected, affirmed or held" by the prosecutor or the opponent's attorney.

STATUTES

U.S. Const. Article 1	4,11
U.S. Const. Articles I, IV, V, VI, VII	4
Title 14, chapter 1, Sec. 7	13
Title 14, chapter 1, Sec. 15	13
Sec 78-2a-2(f)	1
Sec 78-2a-3	1,9
RCP 8(d)	6,15
RCP 12(f)	1,5,22
RCP 13(k)	2,5,7,8,9
CCrP 76-2-202	1,4,5,18
CCrP 77-1-6	2,7,15
CCrP 77-26-19	2,4,5,6,8,9,15
CCrP 77-26-20	2,4,5,6,8,9
CR 1901.21(A)	20

Utah Court of Appeals
May 12, 1993

APPELLANT'S REPLY BRIEF
Utah -vs- Peterson

D. STATEMENT OF JURISDICTION

1. The instant action is an appeal to the Utah Court of Appeals to carry into effect judgments, orders and decrees that should be levied by the court, to have judgment in a court having jurisdiction in the amount claimed by the defendant. The instant action is an appropriate appeal from the justice and circuit courts - per Sec 78-2a-3, subsections (1)(a), (1)(b) and (2)(d).

2. The instant action is not an appeal from district court in a criminal case as the plaintiff purport's per Sec 78-2a-2(f).

E. STATEMENT OF THE ISSUES
(Inappropriate and Untimely Request to Strike etc.)

3. **For the plaintiff**, for his immediate defense, the plaintiff appears to be trying to invent a motion to strike the defendant's defense.

4. A motion to strike is governed by RCP 12(f) and must be made within twenty days after service of the pleading upon him.

5. The plaintiff has never made a motion to strike the defendant's defense and asking the court to strike the defendant defense at this juncture is inappropriate, untimely and out of order.

6. **For the defendant**, his first issues are his entitlement to his defense and his offsetting counter-claim.

7. Is the defendant allowed to provide an explanation for his circumstances, and defend his circumstances, even if blame falls to the plaintiff per CCrP 76-2-202.

8. Can the adversary in a matter and the court suppress and

Utah Court of Appeals
May 12, 1993

APPELLANT'S REPLY BRIEF
Utah -vs- Peterson

ignore the **defense**, with its counterclaim, of the opponent.

9. Can the prosecutor put the matter into a circuit court, which does not have jurisdiction, after a justice court judge has ordered its appeal for jurisdiction per RCP 13(k). Note an appeal for jurisdiction from the Justice court is to the District court.

10. Is a trial continuance, in the circuit court **legitimate** after it has been lawfully halted by both a counter claim in excess of its jurisdiction and additionally an appeal per RCP 13(k).

11. Is trial and judgment proper before completion of discovery, and presence of the defendant per CCrP 77-1-6 and his defense otherwise.

12. Is it legitimate that the prosecutor, also being the plaintiff's attorney, can determine what is allowed in the court as the defendant's defense, and furthermore can he strike, suppress and shield from the court what he deems not allowable for the defense of the defendant or otherwise.

13. Is a trial legitimate where the defendant's defense was stricken and suppressed by the prosecutor, the plaintiff's attorney, where the prosecutor apparently met with the court, scheduled a trial, knowing that he had the defendant's defense shielded from the court, the activities of the prosecutor being an unlawful class B misdemeanor per CCrP 77-26-19 & 20.

14. Can the prosecutor interfere with a defendant's defense, his access to the court, and his due process of law, and never be

Utah Court of Appeals
May 12, 1993

APPELLANT'S REPLY BRIEF
Utah -vs- Peterson

accountable to the court system.

15. With the plaintiff being a government entity, is the plaintiff allowed to continuously ignore the complaint of the defendant and never answer.

16. Is trial and judgment proper before completion of discovery, particularly in view of the objections and motions of the defendant.

17. Will the courts continue to ignore the plaintiff's failure to answer to the defendant's counter-complaint and allow the plaintiff's not answering, allowing him to avoid this matter, and allowing him to avoid judgments of the court.

18. Can the court continue file to enter default judgment as required by law.

19. Is a precedent being set allowing the plaintiff or prosecutor being allowed to rule and control, outside of the court, what the defendant is permitted to use as his defense.

20. Is it legitimate to make and declare the inability to pay property taxes and the non-payment of property taxes a **criminal offence**, in view of the site of the plaintiff and otherwise.

21. The plaintiff apparently asserts his complaint as a criminal matter, but his sites require that the violation of municipal ordinance is not a crime. The plaintiff apparently asserts that the defendant's defense and counter-complaint are of a civil nature, but the defendant accuses the plaintiff criminal activity per

Utah Court of Appeals
May 12, 1993

APPELLANT'S REPLY BRIEF
Utah -vs- Peterson

RCC 76-2-202; and additionally, the defendant accuses the plaintiff of a multitude of criminal activities including unauthorized removal of court and corporate records, unlawful per CCrP 77-26-20, and theft of the defendant's properties CCrP 77-26-19, and otherwise and continuous fraud that has been precipitated by the plaintiff for him to evade his obligations of payment to the defendant.

22. Is imputing a defense to be a civil issue while imputing the offense to be a criminal issue rationalization for disallowing the defendant's defense particularly when it contains his grievance made per Article 1 of the U.S. Constitution which stipulates that there shall not be law respecting prohibiting the right for a redress of grievance against the plaintiff.

F. DETERMINATIVE STATUTES

23. Fundamental are the U.S. Constitution Articles I, IV, V, VI, VII for right to redress of grievance, to be secure in papers against seizures, for security in his property, and trial rights.

24. Fundamental in the Utah law are defendant's rights to his grievance per the Utah Bonding Law requirements as intended by the State of Utah legislator to protect Utah citizens from the State of Utah Government from its taking of properties and work from its citizens without fair payment or consequences otherwise.

25. Is the defendant entitled to his defense or can the plaintiff have the defendant's defence stricken contrary to what is allowed by RCP 12(f).

Utah Court of Appeals
May 12, 1993

APPELLANT'S REPLY BRIEF
Utah -vs- Peterson

26. Is the defendant entitled to a legitimate trial in a court of jurisdiction per RCP 13(k).

27. Can the plaintiff or prosecutor strike, suppress, remove, and hide from the court the defendant's defense, which plaintiff's and prosecutor's activities are unlawful per CCrP 77-26-19 & 20.

28. Is the defendant allowed to provide an explanation for his circumstances, and defend his circumstances, even if blame falls to the plaintiff per RCC 76-2-202.

G. STATEMENT OF THE CASE

29. The defendant is apparently charged by the plaintiff for not paying certain vehicle property taxes and fees to him.

30. The defendant counterclaimed an offset that the plaintiff has not yet paid him for the cost of his property and work provided in 1985 for moving the Vitro tailings, the cost to the defendant now being \$16.2M and owing by the plaintiff.

31. From previous court actions the plaintiff was already postured in a multitude of default judgments for payment to the defendant for the plaintiff's admittance of owing \$16.2 to defendant relative to other failures of answering to the defendant's complaint.

32. In other court matters as well as this case, the clerks of the court and the judges have failed to enter default and order execution against the plaintiff as required by law.

33. In his prosecution of this matter, the plaintiff's attorney interfered at the court with the defendant's filings of his papers.

34. In the prosecution of this matter the prosecutor, also the plaintiff's attorney apparently (personally struck) seized, withheld, and conceal the defendant's defense from the court and scheduled a trial of the defendant knowing that he, the plaintiff, had concealed the defendant's defense from the court.

35. The plaintiff's attorney's hiding of the defendant's defense papers from the court is an unlawful class B misdemeanor per CCrP 77-26-19 & 20.

36. The plaintiff has provided no defense for his not answering to the defendant's off-setting counterclaim.

37. The prosecutor and plaintiff's attorney has provided no defense for his not answering to complaint of his confiscations, personal striking, and hiding from the court the defendant's filings.

38. The plaintiff's attorney's failure to answer constitutes his admittance of the defendant's monies off-setting and papers seizure complaints and required judgment for the defendant, RCP 8(d).

H. NOT A CRIMINAL MATTER

39. The plaintiff has insinuated that the defendant is a criminal.

40. The defendant questions that the inability and failure to pay taxes is criminal offense.

41. The defendant has never been read the "Miranda" warning and has been denied 1(a) appearance and defense in person and counsel, 1(c) testifying in his own behalf, and 1(d) confronted by the

Utah Court of Appeals
May 12, 1993

APPELLANT'S REPLY BRIEF
Utah -vs- Peterson

witnesses against him, and has 2(a) been illegally twice put in jeopardy for the same offense, ref CCrP 77-1-6, Rights of Defendant.

42. The matter of the plaintiff v. the defendant is not a criminal matter.

Municipal Corporation KEY 633(1)635 Violation of municipal ordinance is not a crime; however, enforcement of ordinance must follow Rules of Criminal Procedure. Rules Crim. Proc., Rules 51-91, 42 Pa.C.5.A., 598 A.2d 106.

TRIAL OF THE CIRCUIT COURTS WAS UNLAWFUL

43. After his receipt of the plaintiff's complaint, on about the 24th of June 1992 the defendant filed a counter-complaint against the plaintiff. The filing of plaintiff's automatically triggered an appeal per RCP 13(k).

Where any counterclaim or cross-claim or third-party claim is filed in an action in a city court or justice's court, and due to its limited jurisdiction, such court does not have the power to grant the relief sought thereby, it shall suspend all proceeding is the entire action and certify the same and transmit all papers therein to the district court of the county in which such inferior court is maintained.

44. In a pre-trial conference with Judge Sigman and plaintiff's attorney Ben Davis, and the defendant, the defendant believes that Judge Sigman was not knowledgeable of how to handle the matter per RCP 13(k) where the defendant defense included his \$16.2M offset claim. But it was agreed in the court pre-trial conference that the matter would be transferred to a court having jurisdiction.

45. The justice court of Judge Sigman did allow the appeal of the matter from her court to enable the consideration of the defendant 16.2M counter-complaint and defense.

Utah Court of Appeals
May 12, 1993

APPELLANT'S REPLY BRIEF
Utah -vs- Peterson

46. On September 2, 1992 the defendant received a note from the justice court that the matter had been transferred to the Provo District Court.

47. Instead, in opposition to RCP 13(k), per Docket No. 3, dated 7/22/92, under the stamped signature of justice court of Judge Sigman order the matter transferred to Provo Circuit Court. This was an unlawful procedure per RCP 13(k) after the defendant's filing of his defense including counter-claim, and by his personal request for jurisdiction before the justice court.

48. The defendant believes that the prosecutor took advantage of Judge Sigman's ignorance and obtained an unlawful transfer from her justice court to the Provo Circuit court.

49. The prosecutor and attorney for the plaintiff wrongfully transferred the matter to the Circuit Court, in doing so,

50. The prosecutor held back all of the defense papers of the defendant, which concealment (personal striking) is an unlawful action and a class B misdemeanor per CCrP 77-26-19 & 20.

CCrP 77-26-19. Refusal to provide information - false information - Misdemeanor.

Any person who neglects or refused to provide, or willfully withholds, any information under provisions of this chapter, or who willfully providers false information, or who willfully fails to do or perform any act so required to be done or performed by him under this chapter, or who shall hinder or prevent another from doing an act so required to be done by that other, shall be guilty of a class B misdemeanor.

CCrP 77-26-20. Unauthorized removal, destruction, alteration or disclosure of records - Misdemeanor.

Utah Court of Appeals
May 12, 1993

APPELLANT'S REPLY BRIEF
Utah -vs- Peterson

Any person who, except by the authority of and in compliance with procedures as established by the commissioner, willfully removes, destroys, alters, mutilates or discloses the contents of any file or record of the bureau shall be guilty of a class B misdemeanor.

51. Technically, the cross-claim of the defendant of 24th of June 1992 also constituted an appeal of the matter from the circuit court per RCP 13(k) since the circuit court did not have jurisdiction of defendant's offset claim of \$16.2M.

52. As stated in the plaintiff's brief, on the morning of October 15, 1992, the defendant did file a notice of appeal per RCP 13(k), and otherwise.

53. The matter is now appropriately before the Utah Court of Appeals for trial. Utah Judicial Code 78-2a-3.(2)(d) states that "the Court of Appeals has appellant jurisdiction ... over ... appeals from the circuit courts. This was the targeted appeal of the defendant.

54. The matter is not before the Utah Court of Appeal for review of the judgments of the lower trial courts since the lower trial courts could never lawfully conducted a trial.

55. The court action of the lower courts, however, must be reviewed in conjunction with determining the misconduct of the plaintiff, his attorney, and the court's prosecuting attorney per Utah Code of Criminal Procedure 77-26-19 & 20.

56. The decision of and Court of Judge E. Patrick McGuire must also be delved into wherein he apparently conducted an unlawful trial

Utah Court of Appeals
May 12, 1993

APPELLANT'S REPLY BRIEF
Utah -vs- Peterson

per RCP 13(k) wherein he should have had defendant's defense papers of June 24, 1992 with its counter-complaint, and the defendant's notice of appeal of October 15, 1992 which clearly show that the circuit court did not have jurisdiction and that the court should appropriately transfer the matter to the Utah Court of Appeals for trial.

57. Judge E. Patrick McGuire should have question why the matter was in his court, why the matter was appealed from the justice court. As soon as Judge McGuire learned that the matter had been appealed for jurisdiction, he should have realized that he must likewise convey the matter to the Court of Appeals since he certainly should have recognized that he did not have jurisdiction.

I. STATEMENT OF FACTS

58. This matter is one situation of a long series of situations where the plaintiff has severely damages the defendant and still continues to do so.

59. In 1985 the plaintiff failed to pay some quarter million dollars clearly owing to the defendant for his property and technologies taken and used to move the Vitro tailings.

60. Since then, the plaintiff has inflicted more damages on the defendant in his divorce and support for his family which all would never have happened if the plaintiff had not first taken the defendant's properties without payment to him.

61. The plaintiff's Department of Commerce, Division of

Utah Court of Appeals
May 12, 1993

APPELLANT'S REPLY BRIEF
Utah -vs- Peterson

Corporations particularly compounded the damages when the plaintiff unconstitutionally seized the defendants papers of his corporation No. 118115. The atrocities of this matter are seen in Third District Court Civil No. 910904929PR.

EXTRANEOUS MATTER:

62. In the matter of the defendant, the courts have functioned as a policy making and enforcement arm of the plaintiff rather than being a source of judgment of equality according to law.

63. Our nation's government is in grave financial condition because of its failure to use, function with, and enforce Article I Section 8, subparts 3. and 5. of its Constitution.

64. To appease its citizenry, our elected congress has allowed its citizenry to usurp the fruits of all of the world and even made it law that our nations citizens cannot produce for themselves.

65. The defendant, who is capable to do so, has determined our government's deficit is a consequence of our nation's imbalance of trade. The citizenry's export of our nations's coin ruins our governments tax base for its income leaving it with no other alternative than debt itself to operate. And those who should otherwise be working are left unemployed, with many trying to sustain themselves by crime, and putting our nation in general frustration and disarray.

66. When people who are trying to take care of themselves get their backs up against the wall, they take different actions in their defense and defiance which are clearly not understood by our government.

Two recent national examples are the riots in Los Angles and the extreme of the deaths in Wayco Texas. Locally, over the ending of military work, we see our elected official behaving like two year old who have their binky threatened. They run all over the country throwing tantrums on the cutting back of military spending when for centuries world piece is a global goal. They will not have vision or listen that Utah now has a fantastic opportunity to chose a commercial manufacturing opportunity from the huge catalog of our imports. An excellent choice for Utah would be to use the existing, state of the art, Tooeele engine facility to manufacture engines for Detroit and replace what it imports from Japan. Half of our nation

Utah Court of Appeals
May 12, 1993

APPELLANT'S REPLY BRIEF
Utah -vs- Peterson

deficit can be attributed to our nations import of vehicles, firstly from Japan, and secondly from Germany. Utah can potentially eliminate 1/4 of our nations deficit by developing Tooele to manufacture high-tech automobile engines.

67. Taking the defendant's properties from him, and not paying him, is what keeps him from his work opportunities.

68. This defendant has a problem caused by unlawful activities of the State Government. Suffice to say, this defendant chooses not to lay down and give up, but to study, seek solutions, and to try and make the solutions happen.

69. As for these continuous attacks using the law upon the defendant, where the State continues to demand from him, where he does not have monies to pay as the State demands, where the State has the defendant's monies, the defendant will continue to demand for his rights in the courts.

70. The takings of the State, with their refusal to be accountable to the defendant, even the State's failure to answer to the defendant's counter-claims, with the court's failure to rightly enter default, has reached an epidemic of racketeering proportion. When the defendant takes this matter into the Federal Courts for the justice of the Utah courts the charge will be for racketeering of the State of Utah, its attorneys, and its courts.

71. In the immediate matter, the Court of Appeals must ask why is this matter before this court; and answer, the matter is before the UCA for its jurisdiction.

72. When the prosecutor for the justice court and attorney for the defendant "fraudulently" took the matter to the Fourth Circuit Court, the first question that Judge E. Patrick McGuire should have ask was why is this matter in my court, and the appeal and counter-complaint of the defendant should have conveyed to him that the matter was appealed for "jurisdiction", which jurisdiction was not in Judge McGuire's court, by the amount of counter-complaint and test of

Utah Court of Appeals
May 12, 1993

APPELLANT'S REPLY BRIEF
Utah -vs- Peterson

the appeal.

73. In the matter of the January 1985 plaintiff contract with the Argee corporation in which the defendant was a supplier, the contract payment bond was flawed and no good. In July of 1985 defendant commenced his proceeding for collection of his materials and labor and notified the State of his failure to provide his payment bond as required by law and the project contract. Into the contract was written the following:

Title 14, chapter 1, Sec. 7. **Liability of public body for failure to obtain payment bond.** requires that:

Any public body subject to this act which shall fail or neglect to obtain the delivery of the payment bond as required by this act, shall, upon demand, itself promptly make payment to all persons who have supplied materials or performed labor in the prosecution of the work under the contract, and any such creditor shall have a direct right of action upon his account against such public body in any court having jurisdiction in the county in which the contract was to be performed and executed which action shall be commenced with one year after the furnishing of materials or labor.

Title 14, chapter 1, Sec. 15. **Liability of state or political subdivision failing to obtain bond.** requires that:

If the state or one of its political subdivisions fails to obtain a payment bond, it shall, upon demand by a person who has supplied materials or performed labor under the applicable contract, promptly make payment to that person, and the creditor shall have a direct right of action on his account against the appropriate political entity in any court having jurisdiction in the county in which the contract was to be performed. The action shall be commenced within one year after furnishing of materials or labor.

74. After the defendant initiated action for collection, as a

Utah Court of Appeals
May 12, 1993

APPELLANT'S REPLY BRIEF
Utah -vs- Peterson

result of the defendant's notification to the plaintiff that his payment bond was flawed and no good, in August of 1985 the plaintiff amended his payment bond document, but did not pay the defendant. The defendant remains unpaid for his properties taken and used by the plaintiff, without enumeration, Ref. Civil No. 900900523.

75. In 1989, to stop continuous corporate filings of intruders into his business, defendant did a lawful merger of two of his corporations. Approximately six months later, the plaintiff unlawfully seized the defendant's merger papers, the unlawful seizure allowed the intrusion and the continuation of the intrusion of others into the defendant's business and family, Ref Civil No. 910904929PR.

76. The plaintiff has not rectified either of these situations and remains obligated by law to the defendant for his costs of \$16.2M.

77. By his answers, the plaintiff has admitted his debt to the defendant and the court must now enter judgment for the same.

J. ARGUMENT

78. The plaintiff argues that the defendant is not entitled to his defense, (argues that the defendant's defense is stricken).

79. The plaintiff is trying to make a conviction in a court from which the defendant clearly appealed the matter:

a) by his counter-claim, which automatically appealed the matter for Jurisdiction.

b) by his appeal the morning before the purported trial.

Utah Court of Appeals
May 12, 1993

APPELLANT'S REPLY BRIEF
Utah -vs- Peterson

c) By all failures to give Miranda rights per Sec 77-1-6.

80. The plaintiff is trying to make out that the defendant is a criminal, in criminal activities; i.e, wherein defendant is being without his monies, the plaintiff having defendant's monies, the plaintiff purporting this makes the defendant a criminal.

81. The plaintiff is trying to make an offender of the defendant wherein, in fact, the plaintiff is the offender.

82. The matter has never been in a court of jurisdiction.

83. Discovery has never been completed in preparation for trial, except that by the plaintiff's failure to answer or participate in discovery, Ref. CCRP 77-26-19 constitutes his admittance per RCP 8(d) - Effect of failure to deny.

84. The plaintiff has failed to defend for his failure to answer to the defendant's offsetting counterclaim/defense.

85. In his brief, the plaintiff reference four case matters. In the first matter the plaintiff recites City of Logan v. Utah Power & Light.

In this matter the electric utility appealed from decision entered in First District Court, Cache County VeNay Christofferson., ordering utility upon payment of \$117,000 by city, to transfer to city title in and use of electrical distribution facilities in previously unincorporated annexed area. Pointed out was **Appeal and Error** - where appeal raises question of law only, State Supreme Court will grant no deference to trial court's ruling, but will review it for correctness.

86. In City of Logan v. Utah Power & Light the matter went through discovery, and through trial. But this immediate matter is

Utah Court of Appeals
May 12, 1993

APPELLANT'S REPLY BRIEF
Utah -vs- Peterson

stalled in discovery and had no legal trial. The reference site offers no defense for the plaintiff's failure to answer. If the plaintiff purports reviewing the immediate case trial for error, then the appellant court must first review if the trial court had jurisdiction, which it did not. The appellant court must see if the entire file matter, both the plaintiff's complaint and the defendant's defense were in the court, and they were not. The appellant court must review if the trial was constitutional, the Miranda requirements met, and find that they were not met.

87. If standard of review is to review the immediate matter for correctness, then the court must find the failure of the plaintiff to answer, the prosecutors illegal seizure of the defendant's papers, no motion to strike, and the fraudulent misrepresentations to the circuit court in what was provided in setting and having a purported trial of the defendant.

88. A pre-trial meeting took place between the prosecutor Ben Davis and Judge E. Patrick McGuire to set a trial. The defendant or his representative were excluded. At that meeting, at that time, Ben Davis was fraudulently suppressing the defendant's defense, wherein at that time the docketing statements show that some 10 papers of the defendant's defense had not been transferred with the file.

89. In the law, the Miranda law requires the presence of the defendant for trial. If the defendant is not present, the appropriate action would be the issuance of a bench warrant.

90. The Plaintiff quoted Hutchins v. Commonwealth

A district justice found Appellant guilty of a summary offense motor vehicle violation. The defendant appealed the matter. In his appeal the defendant asserted a counterclaim for violations of due process, false arrest, malicious prosecution and abuse of process in prosecution. In other words, under the docket number of his summary appeal, the appellant also filed a new counterclaim in the civil action. The appellant **court affirmed** the dismissal of the appellant's new defense for the original tried matter.

In the matter of Hutchins v. Commonwealth, the appellant court would apparently only review the activities of the lower court for correctness. Note, the counterclaim was filed in the appeal after the original trial. The counter-claim was not a defense in the original trial.

91. The Plaintiff referenced City of Philadelphia v.

Pennrose Management Co.

City brought action against municipality and its agent over a miss-payment of taxes matter. The Judge sustained objections to strike. The City appealed the Judges failure to **strike**.

5. Appeal and Error - Appellant court may affirm judgment of trial court where result is correct, even though reasons given is erroneous, when correct basis for decision is clear on record.

7. Municipal Corporation KEY 633(1)635 **Violation of municipal ordinance is not a crime**; however, enforcement of ordinance must follow Rules of Criminal Procedure. Rules Crim. Proc., Rules 51-91, 42 Pa.C.5.A., 598 A.2d 106.

92. The case matters of the plaintiff convey the opposite of what the plaintiff purports. The plaintiff is trying to make an issue of criminal defense vs. civil defense. The plaintiff has shown no reference where the law differentiates a defense according to a civil reason defense or criminal reason defense. It must be reasonable that a person accused of a criminal activity would not have to restrict his defense to a criminal type activity.

Utah Court of Appeals
May 12, 1993

APPELLANT'S REPLY BRIEF
Utah -vs- Peterson

93. City of Philadelphia v. Pennrose Management Co. appears not to have a criminal issue. In the case reference it

says: "Municipal Corporation KEY 633(1)635 **Violation of municipal ordinance is not a crime**; however, enforcement of ordinance must follow Rules of Criminal Procedure.

94. This site points out that ordinances relative to taxes, fees, regulations etc. are not criminal offenses. In general, persons understand why property taxes are necessary pay, and pay these taxes with little objection. Its quite different, however when a taxing entity takes so grossly from an individual that the individual loses his ability to pay, also, when additionally, he owes far more than he has monies to pay, he is given no choice but not paying. When choices are between his paying his family's support, his work license, his business license, his drivers license, his property taxes, and his home payment, with fees like hunting license and recreation not even considered for payment, it becomes understandable that it is unrealistic to consider such a person a criminal. In this instance, the pressures of the plaintiff caused the defendant to lose all cost and all losses indicated. The plaintiff would be the criminal in this matter where he forced the defendant into his position of being not able to pay.

76-2-202. **Criminal responsibility for direct commission of offense or for conduct of another**

Every person, acting with the mental state required for the commission of an offense who directly commits the offense, who solicits, requests, commands, encourages, or intentionally aids another person to engage in conduct

Utah Court of Appeals
May 12, 1993

APPELLANT'S REPLY BRIEF
Utah -vs- Peterson

which constitutes an offense shall be criminally liable as a party for such conduct.

95. By the plaintiff's holding back what he owes to the defendant, the plaintiff encourage, even forced the defendant that he could not pay taxes, fees, etc which are his normal obligations.

96. The plaintiff is thus criminally liable in this matter.

97. City of Independence v. Mickey:

In this matter a municipality charged defendant Mickey for storing his dump truck in a residential area. Mickey filed a counter-complaint against the Mayor and zoning Commissioner and an affidavit of bias and prejudice against the municipal court judge. On a motion of the plaintiff, the counter-complaint was **stricken**. The record is silent on the matter of the defendant's charge of the judge. The court apparently dismissed a count alleging illegal repair but did charge Mickey with storing the vehicle in a residential area. The appellant court apparently affirmed the judgment of the municipal court **since none of Mickey's arguments are meritorious**

98. This matter deals with a motion to strike. The site does not show any relationship with Mickey's truck parking and the Mayor and zoning commissioner. But the site does say Mickey was allowed argument in the matter and the court must have considered his counterclaim, but says that his argument was not meritorious. This case reference does not discuss a failure to answer Mickey's counter-complaint. The plaintiff apparently answered and failure to answer was not an issue. The plaintiff makes issue that illegal parking is a crime. This case points out the absurdness of trying to assert that a municipal ordinance as a criminal offense. And if illegal parking is criminal, everyone who drives and parks a car is at times

Utah Court of Appeals
May 12, 1993

APPELLANT'S REPLY BRIEF
Utah -vs- Peterson

a criminal, it cannot be avoided.

99. In his site, the plaintiff references See, also, CR 1901.21(A). "The rules do not authorize the assertion of a civil counterclaim in a criminal matter". The University Law Library was not able to provide the defendant with a record of Independence v. Mickey but the reference of plaintiff's reply brief does not show relevance of this portion of the "JOURNAL ENTRY AND OPINION". The site says that the defendant's cross-complaint was stricken since none of the defendant's "arguments are meritorious". To try to assert a civil counterclaim is not allowable in a criminal matter would disallow the recent judgment for Rodney King in Los Angeles v. Rodney King.

100. If the plaintiff has a problem with this, and wants to perpetuate this criminal v. civil business, then the defendant asserts that his cross-charge is not a civil charge but a criminal charge against the plaintiff. The taking the defendant's properties without payment is certainly the most criminal activity of this whole matter. However they classify, they certainly relate and the plaintiff's event caused the defendant's event, no exceptions.

101. The University Law Librarian says that State v. Latendresse was obtained from a "Westlaw" computer and not accessible to the defendant.

Latendresse was charged with and convicted of the misdemeanor offense of issuing a bank check without sufficient funds. Latendresse appealed from the County Court judgment. **On appeal**, Latendresse raised several defenses. **On appeal**, Latendresse

Utah Court of Appeals
May 12, 1993

APPELLANT'S REPLY BRIEF
Utah -vs- Peterson

appears to raise two additional arguments. First - that criminal penalties ... are prohibited because ... law reference to both civil and criminal penalties. Second, Latendresse apparently argues that the trial court improperly denied his civil "counterclaim" brought against the State in this criminal proceeding. The "Supreme Court of North Dakota Affirmance by Summary Opinion." - **We deem these arguments to be completely without merit.** Conviction affirmed pursuant to Rule 35.1(a) (1) and (7).

102. The first reference item points out that Latendresse tried to required a differentiation between civil and criminal penalties but did not prevail.

103. The second argument item points out that Latendresse tries to connect criminal vs. civil as the reason for denial of his counterclaim. In both arguments, the court deemed these arguments to be completely without merit.

104. In the plaintiff's brief he stated:

"the court held that a criminal defendant's attempt to file a civil counterclaim in a criminal proceeding was completely without merit under North Dakota law"

This is a misleading fabrication by the plaintiff. The site says that the his "counterclaim" was denied, not its "filing" was disallowed as the plaintiff states. The site reference to an appellant ruling on decision of the lower court does not assert any determination basis of criminal vs. civil, but possibly just the opposite. In Latendresse's first arguments he asks for a dismissal because penalties reference to both civil and criminal. The court deemed this argument to be with out merit. The court likewise probably deemed Latendresse's second argument to be without merit

Utah Court of Appeals
May 12, 1993

APPELLANT'S REPLY BRIEF
Utah -vs- Peterson

where he again attempted to relate civil and criminal matters as not being compatible.

105. The plaintiff appears to be using a word.processor to scan files in an attempt to find the word civil and criminal together, then twist what he finds to attempt to show an argument.

106. The plaintiff has not shown any basis for not allowing the defendant to assert an offsetting counter-claim.

107. The plaintiff has not shown any basis for allowing him to not answer to the defendant's counter-complaint.

108. The plaintiff has not shown any basis for allowing him to suppress the defendant's defense and offset counter-claim.

109. In every reference of the plaintiff, the court determined what or what not was stricken, not the plaintiff or the prosecutor.

K. SUMMARY

110. The plaintiff has never made a motion to strike the defendant's defense/counter-claim.

111. A motion to strike is governed by RCP 12(f) and must be made within twenty days after service of the pleading upon him.

112. Asking the court to strike the defendant defense at this juncture is inappropriate, untimely, and out of order.

113. The plaintiff has no defense for the defendant's complaint and the plaintiff's illegal activities in the court and judgment must issue against the plaintiff according to law.

114. The plaintiff has put up a defense that the his matter

Utah Court of Appeals
May 12, 1993

APPELLANT'S REPLY BRIEF
Utah -vs- Peterson

against the defendant is a criminal matter but the defendant's defense is a civil matter. Note, however, if the defendant does owe monies to the plaintiff as he purports, then the defendant is certainly not a criminal, and the plaintiff's conjecture that the defendant is a criminal is in not valid. And if this is true, then possibly the employees of the plaintiff are the criminals. A site has been made that **the Violation of municipal ordinance is not a crime**. No ruling has been made that this is a criminal matter, but just the opposite. Justice Court Judge Alyse Sigman allowed the appeal of this matter to allow the hearing of the defendant's defense and counterclaim. What's more, the complaint of the defendant against the plaintiff is not new. The plaintiff is postured in default judgements to the defendant for his same complaint in several other courts. See Civil No. 900901098, Civil No. 82163573R1,R2. The plaintiff has no authority to make a predetermination of the defendant and his defense and from that thus discontinue his side of prosecution of the matter. The matter required the plaintiff to answer to the defendant's counter complaint. The plaintiff failed to answer, his not answering constituted his admission. The defendant thus petitions for judgment of the plaintiff according to law.

L. CONCLUSION

115. Stemming from 1985, a fraudulent situation exists where the plaintiff made false representations that a contractor was assured payment for his work and property taken for plaintiff's

Utah Court of Appeals
May 12, 1993

APPELLANT'S REPLY BRIEF
Utah -vs- Peterson

project of moving the Vitro tailings. Likewise, the plaintiff made fraudulent representations that the defendant could file papers maintaining his control, ownership, and corporation rights. The plaintiff failed to pay the defendant for his work, and plaintiff unlawfully seized the defendant's filed papers. Both are fraudulent situations of the plaintiff. The same monies that the defendant expects to be paid for his work are now expected by the plaintiff to pay for the support of the defendant's family and taxes on the defendant's properties. "Fraud destroys the validity of everything into which it enters." Now the validity of the public system and public property tax system is questioned. The defendant clearly has certain rights given to him by the Constitution's Bill of Rights. The defendant has carefully explained the economic condition of the macro-economy of this nation. The Congress's and various Government's fraudulent operation of the nation and their failure to live the letter of the law has now clouded the validity of itself. Our nation is attempting to operate by an economic system which physically and constitutionally will not work. No entity can exist consuming more than it produces without deficit. To perceive otherwise is fraud. The defendant complain's of fraud of the plaintiff. The mere defense of the plaintiff is his "correctness standard" assertions. Well, the fraud of the plaintiff has destroyed the validity of any standard which he may assert.

116. The attorney and prosecutor's preventing of the

Utah Court of Appeals
May 12, 1993

APPELLANT'S REPLY BRIEF
Utah -vs- Peterson

defendant's filing papers and seizing and hiding the defendant's defense from the court is an extremely serious matter. This is fraud of its worst sorts. "Fraud destroys the validity of everything into which it enters." The prosecutor's fraud has destroyed the validity of himself, the validity of the plaintiff's attorney, the validity of the plaintiff, and the validity of any action of the Justice Court and the Circuit Court.

117. The court rules what is admissible in a matter. What is admissible is not a judgment of the plaintiff, his attorney, or the courts's prosecutor. The plaintiff's defense for ignoring the defendants defense / counter-complaint may be a reasonable defense in trial but it is no defense for his not answering to the defendant's counter-complaint. What is admissible requires a ruling of the court after a proper motion to strike. The plaintiff has never made a motion to strike, and he is now way beyond time for such a motion. The effect of not answering to a complaint is an admission to the elements of the complaint and judgment must then issue. The plaintiff has stated that there is no question of fact. By his not answering, the plaintiff has admitted to the complaints of the defendant, therefore judgment must issue against the plaintiff.

Dated this 12th day of May, 1993,


William D. Peterson

Utah Court of Appeals
May 12, 1993

APPELLANT'S REPLY BRIEF
Utah -vs- Peterson

N. CERTIFICATE OF DELIVERY

This is to certify that a true and correct copy of the foregoing
are being delivered - at the office of the Attorney General, State Capital building in Salt Lake City, Utah, per rule 5 (b)1 and rule 4 (e) (9), or - by deposit in the U.S. Mail with first class postage affixed, addressed to:

Attorney General
236 State Capitol
SLC, Utah 84114

for Attorneys for Plaintiff and third party Defendant

JAN GRAHAM - #1231
Attorney General

BRENT A. BURNETT - #4004
Assistant Attorney General

DENISE CHANCELLOR, USB #5452
Assistant Attorney General

RICHARD K. RATHBURN, USB #5183
Assistant Attorney General

Ben Davis, Davis County Attorney
attorney for the Plaintiff, and
Third Party Defendant
100 East Center, Suite 2100
Provo, Utah 84606

Dated this 12 th day of May, 1993.,


